the proceedings. No party was taken by surprise or prejudiced by reason of the application. That application did not deny the respondents' right to pursue their action. Dismissal, however, denies the appellant a defence which is clearly open to them. Counsel for the respondents based his preliminary objection in reliance upon Order 54 rule 22A and section 68(2) of the Courts of Judicature Act 1964. It is true that the Record does not show compliance with either. The judgment is at pages 22-26 and the order at page 27 is purported to have been made "In Open Court." We would say we agree with what Gill C.J. said in *T.O. Thomas* v. *K.C.I. Reddy & Anor.*:—[1]

"Reading subsection (2) of section 68 of the Act in conjunction with rule 22A, it would seem clear that leave to appeal is not required either if the judge issues a certificate that he requires no further argument or hears arguments in court and proceeds to make an order. The absurdity of the argument that leave is required even after a judge has made an order in court on reconsidering the matter after hearing further arguments lies in the fact that such reconsideration would thus not be considered even on par with a mere certificate that no further arguments are required for the purpose of such reconsideration."

We would allow the appeal and set aside the order refusing leave to amend. The appellant is given leave to amend subject to paying costs occasioned thereby. We make no order on the costs of this appeal.

Appeal allowed.

Solicitors: *Tennakoon, Selva & Co.*

PUBLIC PROSECUTOR v. ZAKARIA BIN ISA

[F.C. (Suffian L.P., Gill C.J. (Malaya), Lee Hun Hoe C.J. (Borneo), Raja Azlan Shah and Wan Suleiman F.JJ.) January 23 and March 20, 1978]

[Kuala Lumpur — Federal Court Criminal Appeal No. 65 of 1977]

Criminal Law and Procedure — Cautioned statement by accused — When admissible under Internal Security Act — Admissibility under Criminal Procedure Code — Internal Security Act, 1960, s. 75 — Criminal Procedure Code (F.M.S. Cap. 6), s. 113.

In this case the accused had been acquitted on charges under section 7(1) of the Firearms (Increased Penalties) Act and section 10 of the Arms Act. On the appeal the Public Prosecutor asked for a ruling on whether a cautioned statement by an accused person under these two Acts is admissible under section 75 of the Internal Security Act. The learned judge had held that it was not and that instead section 113 of the Criminal Procedure Code applied.

Held: (1) a cautioned statement is admissible under section 75 of the Internal Security Act where a person is charged with an offence under the Internal Security Act itself and also where he is charged with an offence against any written law specified in the Second Schedule to the Act;

(2) as the Firearms (Increased Penalties) Act is specified in the Second Schedule of the Internal Security Act, the cautioned statement if it satisfied all the necessary conditions would have been admissible under section 75 of the Internal Security Act; if it satisfied all the necessary conditions in section 113 of the Criminal Procedure Code, it would have been admissible under that section also;

(3) the offence under section 10 of the Arms Act is not specified in the Second Schedule of the Internal Security Act, and therefore the cautioned statement would not have been admissible under section 75 of the Internal Security Act; it would however have been admissible under section 113 of the Criminal Procedure Code, which applies to all cases, be they security cases or otherwise;

(4) as the learned judge had found that the cautioned statement was made under duress and so inadmissible, the appeal against acquittal must be dismissed.

Case referred to:-

(1) *Chong See Leong* v. *Public Prosecutor* [1948-49] M.L.J. Supp. 56.

The following authorities were also cited in argument: *Mohd. Yatim bin Abu Bakar* v. *Public Prosecutor* [1950] M.L.J. 57, *Hassan* v. *Public Prosecutor* [1962] M.L.J. 323, *Ong Kiang Kek* v. *Public Prosecutor* [1970] 2 M.L.J. 283 and *R.* v. *Aves* [1950] 2 All E.R. 330.

FEDERAL COURT.

Mohamed Noor bin Haji Ahmad (Deputy Public Prosecutor) for the appellant.

Datuk Wan Mustapha for the respondent.

Wan Suleiman F.J.: The judgment of the court which I am about to read has been written by the Lord President.

Suffian L.P. (read by Wan Suleiman F.J.): The accused was charged under section 7(1) of the Firearms (Increased Penalties) Act and section 10 of the Arms Act.

He was acquitted by the learned judge, and the Public Prosecutor appeals to us.

There were four grounds of appeal, but at the hearing the Public Prosecutor abandoned three of them and asked us to consider only one ground. The point of law we are asked to rule on is whether a cautioned statement made by an accused charged under these two Acts is admissible under section 75 of the Internal Security Act ("ISA"). The learned judge held that it was not and that instead section 113 of the Criminal Procedure Code applied.

Subsection (1) of section 75 of ISA provides:

"Where any person is charged with any offence against this Act or against any written law for the time being specified in the Second Schedule any statement [which satisfies the conditions set out in the section] shall, notwithstanding anything to the contrary contained in any written law, be admissible at his trial in evidence...."

It will be noticed that such a statement is admissible in two cases:

(a) where a person is charged with an offence under ISA; and

(b) where he is charged with an offence against *any written law specified in the Second Schedule.*

The Firearms (Increased Penalties) Act is specified in the Second Schedule of ISA — see P.U.(B) 336/75 which did not appear to have been brought to the attention of the learned judge. So in our judgment, the cautioned statement, if it satisfied all the necessary conditions, would have been admissible under section 75(1) of ISA in respect of the charge under that Act. Similarly, if it satisfied all the necessary conditions in section 113 of the Criminal Procedure Code, it would have been admissible under that section also.

In our view, the learned judge was in error in thinking that a cautioned statement was admissible

under section 75(1) of ISA if, and only if, the case had been certified by the Attorney-General as affecting the security of the Federation. In our view, since the new section 113 of the Criminal Procedure Code it is so admissible in *all* cases, be they security cases or otherwise.

As regards the charge under the Arms Act, it will be noted that only offences under section *9* of that Act are specified in the Second Schedule, whereas the accused is charged under section *10*. It follows, in our opinion, that the cautioned statement would not have been admissible under section 75(1) of ISA; however, in our judgment it would have been admissible under section 113 of the Criminal Procedure Code.

There appears to have been some confusion regarding the relationship of section 75(1) of ISA with the new section 113 of the Criminal Procedure Code. The ISA was enacted in 1960. At that time the old section 113 of the Criminal Procedure Code held sway, so that a statement made by a person to a police officer during the course of police investigation could not be used in evidence against him. Parliament by enacting section 75(1) of ISA deliberately made an *exception* as regards a person charged under the Act or under any law specified in its Second Schedule. That section was modelled on subsection (4) of section 13 of the Prevention of Corruption Ordinance No. 5 of 1950, added by Ordinance 39 of 1952. The common ancestor of all these provisions was regulation 33 of the Emergency Regulations, 1948, which made the first breach in the long standing principle embodied in the old section 113 of the Criminal Procedure Code.

Then in 1976 Parliament by Act A324 repealed the old section 113 of the Criminal Procedure Code and by the new one expressly allows a cautioned statement made by the accused to a police officer, which satisfies the conditions set out therein, to be used in evidence at his trial. This applies to *all* persons charged with *any* offence under *any* law. Clearly it also covers offences under ISA and under any law specified in its Second Schedule and all offences under the Prevention of Corruption law. So section 75(1) of ISA and the corresponding provision in the Prevention of Corruption law are now superfluous. It would make for simplicity if these overlapping laws were replaced by a single law.

Encik Mohamed Noor said that the words "any other person concerned, or not, in the arrest" in section 75(1) ISA do not appear in section 113(1) of the Criminal Procedure Code. Our research reveals that these words were added to regulation 33 of the Emergency Regulation, 1948, to negative the effect of the decision of the Malayan Court of Appeal in *Chong See Leong* v. *Public Prosecutor*.[1] This and, if any, other differences should be considered and either retained or removed when Parliament replaces these laws by a single one.

The best thing to do is simply to repeal all the other laws and let only the new section 113 of the Criminal Procedure Code remain with such amendments as may be necessary.

In the event, at the end of a trial within a trial, the learned judge found that the cautioned statement in question was made under duress and so inadmissible. The learned Deputy was therefore right in asking this court to merely make a ruling on admissibility without interfering with the order of acquittal.

Ruling accordingly.

Solicitors: *Datuk Wan Mustapha & Co.*

LEE CHOW MENG v. PUBLIC PROSECUTOR

[F.C. (Suffian L.P., Gill C.J. (Malaya), Lee Hun Hoe C.J. (Borneo), Raja Azlan Shah and Wan Suleiman F.JJ.) January 23 and April 8, 1978]

[Kuala Lumpur — Federal Court Criminal Appeal No. 25 of 1977]

Criminal Law and Procedure — Conviction by President of Sessions Court with special powers — Appeal to High Court dismissed — Whether accused can appeal to Federal Court — Act giving right of appeal enacted after date of conviction — Whether Act has retrospective effect — Distinction between statutes dealing with rights and statutes dealing with procedure — Reference on point of law not available — Courts of Judicature Act, 1964, ss. 50(1) and 66.

Interpretation of Statutes — Distinction between statutes dealing with rights, and statutes dealing with procedure — Prospective or retrospective effect.

The appellant had been convicted and sentenced by the President of the Sessions Court with special powers in Kuala Lumpur. His appeal to the High Court was dismissed. The case was then referred by the High Court to the Federal Court on a question of public interest which had arisen in the appeal. By the time the reference come before the Federal Court, sections 50(1) and 66 of the Courts of Judicature Act, 1964, had been amended so as to take away the power of the High Court to make a reference in respect of the decision of a President of the Sessions Court with special powers. The Federal Court therefore refused to consider the reference. The appellant then appealed to the Federal Court, leave having been given to him to file the record of appeal out of time.

Held: the amendment giving a right of further appeal to the Federal Court deals not only with a matter of mere procedure but confers a substantive right. *Prima facie* it has prospective effect only unless there is clear indication to the contrary. There was no such indication in this case and therefore the appellant had no right of further appeal to the Federal Court.

Cases referred to:-

(1) *Gardner* v. *Lucas* (1878) 3 App. Cas. 582, 603.

(2) *Re Joseph Suche & Co. Ltd.* (1875) 1 Ch. D. 48, 50.

(3) *Colonial Sugar Refining Co.* v. *Irving* [1905] A.C. 362.

(4) *Chellapah* v. *Malayan Railway Administration* [1948-49] M.L.J. Supp. 173.

The following cases were also cited in argument: *Public Prosecutor* v. *Datuk Haji Harun bin Idris* [1977] 1 M.L.J. 14, *Hosie* v. *Kildare* [1926] Irish Reports 47.

FEDERAL COURT.

Jagjit Singh for the appellants.

Mohamed Noor bin Haji Ahmad (Deputy Public Prosecutor) for the respondent.

Suffian L.P. (delivering the judgment of the Court): On April 19, 1975, the appellant was convicted and sentenced by the Special President in Kuala Lumpur. He appealed and on October 22, 1975, he lost his appeal in the High Court. At that time he could not